

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 505 of 2015

1. Gangadas S/o Phool Das Aged About 45 Years Caste Panika, R/o
Village Rajankatta, Tahsil Chhura, District Gariyaband,
(Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Collector, Gariyaband, District
Gariyaband, (Chhattisgarh)
2. Kharakhram S/o Lxman, Up-Sarpanch, Gram Panchayat
Rajankatta, Tahsil Chhura, District Gariyaband, (Chhattisgarh)
3. The Board Of Revenue Chhattisgarh Bilaspur, District Bilaspur
(Chhattisgarh)

---- Respondent

For Petitioner

Mr. Sachin Singh Rajput, Advocate

For Respondent/State

Mr. Y.S. Thakur, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

8/9/2015

The petitioner has preferred the instant petition under Article 227 of the Constitution of India assailing the order passed by the Board of Revenue, Chhattisgarh, Bilaspur (for short "the Board"), whereby, while dismissing his revision application, the Board has affirmed the order passed by the Additional Commissioner, Raipur Division on 03.09.2013, which in turn, was preferred by the petitioner against the order dated 28.02.2013 passed by the Sub Divisional Officer, Revenue, Gariyaband (for short "the SDO").

(2) The order passed by the SDO has not been annexed, however, it appears that the proceeding before the SDO was preferred against the order dated 27.11.2012 (Annexure P/4) passed by the Tehsildar, Churra, whereby, the petitioner has been removed from service.

(3) Bare minimum facts, necessary to be referred for adjudication, are that : the petitioner was appointed as Village Kotwar of village Rajankatta, Patwari Halka No.9, Tehsil Churra District Gariyaband in the year 1993. On the allegation of committing forgery and interpolation of revenue records, he was suspended on 25.07.2009, however, he was subsequently reinstated on 21.08.2012. The villagers moved a complaint before the Collector, Gariyaband, *inter alia*, alleging that the Kotwar was incarcerated in an offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code and his conduct is not good, therefore, he deserves to be removed. The Tehsildar, Churra issued a show cause notice to the petitioner, in reply to which, the petitioner admitted the guilt of having encroached the government land. With regard to allegation of interpolation and forgery of record, he stated that a criminal case is pending against him. Based on his

admission, the Tehsildar, Churra removed him from the post on 27.11.2012. His appeal was dismissed by the SDO on 28.02.2013, where-against, the second appeal was dismissed by the Additional Commissioner, Raipur Division and by the impugned order, his revision application has been dismissed by the Board.

(4) Mr. Rajput, learned counsel for the petitioner, has argued that the petitioner has been removed without following Rule 5 of the Rules regarding appointment, punishment and removal of Kotwars and their duties framed under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (the C.G.L.R.C.), therefore, the impugned order deserves to be quashed. Mr. Rajput has also argued that the petitioner ought not to have been removed from service without holding regular enquiry.

(5) Per contra, Mr. Thakur, learned Dy. A.G. would support the action taken against the petitioner.

(6) A reading of the order passed by the Board particularly the findings recorded in para 5 of the order would indicate that the Gram Panchayat has passed a resolution against the petitioner recommending his removal on the ground that he has been arrested in the case of forgery and interpolation of the government records; he has got entered his name in the government land; he has encroached the government land. It has also been recorded that in response to the notice issued by the Tehsildar, the petitioner has admitted that in July 2008, two villagers namely Arjun and Kamlesh had come to his house with whom he had gone to the Patwari office and shown to them the missle Bandobast, whereupon, the said two villagers changed the government record and returned to him. The Tehsildar also recorded the statements of the villagers. It is also recorded that the Tehsildar had

issued a show cause notice and principles of nature justice have been followed. The Board concluded that in the enquiry before the Tehsildar, the petitioner having admitted the misconduct, his removal does not suffer from any infirmity.

(7) Sub-rule (1) of Rule 5 framed under Section 230 of the C.G.L.R.C. provides that the appointing authority may fine, suspend or dismiss a Kotwar for being a bad character, actually participating in any kind of undesirable activities or acting in any manner which, in the opinion of the appointing authority, is not in public interest. The said rule clearly indicates that even a regular Kotwar can be dismissed if his continuation is not in public interest.

(8) In the case at hand, the petitioner admitted his conduct of being involved in interpolation /forgery of government record. Similarly, he admitted that he has encroached the government land. Thus, the order of removal has been passed on admission made by the petitioner.

(9) In **Channabasappa Basappa Happali Vs. The State of Mysore**¹, it has been held in para-5 thus:-

"5. It was contended on the basis of the ruling reported in R. v. Durham Quarter Sessions; Ex parte Virgo, (1952 (2) QBD 1) that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty but one of not guilty. The Police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact

¹ AIR 1972 SC 32

his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observation of the learned Single Judge. {Also see **Secretary to the Panchayat Raj and others Vs. Mohd. Ikramuddin**², **Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and another**³}

(Emphasis supplied)

(10) This Court in **Awadh Ram vs. Steel Authority of India Ltd. And another**⁴ held thus :

14. Even otherwise, the guilt is fully proved from the petitioner's statement in his own handwriting (Ex-P/5) and his statement before the enquiry officer recorded on 18.8.89 vide Ex._P/7 wherein he admitted the charges and the guilt. It is also to be seen that in his averment in paragraphs 7 & 8 of the first case, he admitted his signatures on Ex-P/5. Therefore, once the delinquent has admitted his guilt, no further evidence to prove misconduct is necessary.

The order passed in **Awadh Ram** (supra) travelled up to the Supreme Court and the Supreme Court dismissed the Special Leave to Appeal (C) No.6719 of 2015 by order dated 23.02.2015.

² 1995 (8) SLR 816

³(1996) 2 SCC 12

⁴ WP No.383 of 2004 (decided on 11.9.2014)

(11) The law regarding validity of the order of removal/dismissal on the basis of admission is thus well settled and the same squarely applies in the facts of this case. Rules framed under Section 230 of the C.G.L.R.C. nowhere speaks of holding a regular enquiry. If the appointing authority i.e. Tehsildar has issued show cause notice and has afforded opportunity of hearing to the petitioner in compliance of principles of natural justice, it cannot be said that the petitioner has been removed from service contrary to the Rules or without following the procedure.

(12) As a sequel, the writ petition , being bereft of merit, is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri